

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

## P R O C E E D I N G S

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UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action

vs.

No. 01-06-E

DANIEL LEVETO,

Defendant.

Transcript of proceedings on Wednesday, June 2nd, 2004,  
United States District Court, Erie, Pennsylvania, before the  
Honorable Maurice B. Cohill, Jr., Senior District Judge.

## APPEARANCES:

For the Government: RITA GENETTI CALVIN, Esq.

For the Defendant: DANIEL LEVETO, pro se

Court Reporter: Shirley Ann Hall, RDR, CRR  
619 U.S. Courthouse  
Pittsburgh, PA 15219  
(412) 765-0408

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

(In open court.)

THE COURT: Good morning; be seated.

This is a hearing based on a petition that was filed  
by Daniel Leveto in which he raises several points and also  
has indicated a desire to proceed pro se, which simply means  
he wants to represent himself in this matter without benefit  
of having a — being represented by a lawyer.

Is it still your wish, Mr. Leveto — Dr. Leveto, to  
proceed without an attorney?

DEFENDANT LEVETO: It's my — it's my wish to  
proceed with standby counsel, so I don't think that's quite  
without an attorney, but —

THE COURT: That's right. A standby counsel would  
be there to help you if you called on him to help, but  
otherwise you'd be on your own.

DEFENDANT LEVETO: That's correct, Your Honor, at  
least for the time being.

THE COURT: All right.

Has any — I understand Mr. Lucas talked to you but  
then discovered he had a conflict. Has any other attorney  
talked to you?

DEFENDANT LEVETO: There's been no one else come up,  
Your Honor.

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THE COURT: Okay.

First of all, would you stand and be sworn.

(Whereupon, the Defendant was sworn.)

THE COURT: Be seated, please.

Would you state your name for the record, please.

DEFENDANT LEVETO: Daniel James Leveto.

THE COURT: Will you state your date of birth.

DEFENDANT LEVETO: June 21<sup>st</sup>, 1950.

THE COURT: And your last address.

DEFENDANT LEVETO: 18200 Conneaut Lake Road,  
Meadville, Pennsylvania.

THE COURT: How far did you go in school?

DEFENDANT LEVETO: Doctorate degree.

THE COURT: Are you currently or have you recently  
been under the care of a physician or a psychiatrist?

DEFENDANT LEVETO: No, I have not, Your Honor.

THE COURT: Have you been hospitalized or treated  
for narcotic addiction?

DEFENDANT LEVETO: No, I haven't, Your Honor.

THE COURT: Have you been hospitalized or treated  
for alcohol abuse?

DEFENDANT LEVETO: No, I haven't, Your Honor.

THE COURT: Have you ever been hospitalized or  
treated for any sort of mental illness?

DEFENDANT LEVETO: No, I haven't, Your Honor.

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THE COURT: Are you under the influence of any  
narcotic drug, medicine, pills or alcoholic beverage today?

DEFENDANT LEVETO: No, Your Honor.

THE COURT: Have you taken any drugs, medicine or  
also pills or drunk any alcoholic beverages in the past 24  
hours?

DEFENDANT LEVETO: No, I haven't, Your Honor.

THE COURT: How do you feel physically and mentally  
right now?

DEFENDANT LEVETO: I feel fine, Your Honor.

THE COURT: Do you feel you clearly understand  
exactly what's happening here and now?

DEFENDANT LEVETO: No, I don't, Your Honor.

THE COURT: And in what way don't you understand?

DEFENDANT LEVETO: Well, at the last hearing I  
voiced that my first request was to bring paid counsel on  
board, and I expressed reasons that I couldn't do that. The  
second best choice was pro se with assistance of counsel;  
which if I had assistance of counsel today, perhaps I would  
better be able to understand just what I'm doing now.

THE COURT: Do you have any comment, counsel, on his  
position? Should we continue this thing today or —

MS. CALVIN: Your Honor, it sounds to the Government  
as if Dr. Leveto is talking about hybrid representation.

THE COURT: I'm sorry?

1 MS. CALVIN: As if he is talking about hybrid  
2 representation. I believe, if my recollection serves  
3 correctly, at the last hearing he talked about having some  
4 motions he wanted to file himself and — but possibly also  
5 have some that were —  
6 THE COURT: You can't really do that. It's got to  
7 be one way or the other, not that you wouldn't consult —  
8 assuming you chose to be represented by an attorney, you could  
9 consult with that person and, naturally, on any pleas or any  
10 strategic moves that were made in the course of the case; but  
11 you can't say, "Well, I'm going to file this motion and he's  
12 going to file that motion."  
13 DEFENDANT LEVETO: I understand that, Your Honor;  
14 but here I am today, and I'm sworn in, and I really would like  
15 to have assistance of counsel, because this is not exactly  
16 what I was aware of was going to happen today, that there will  
17 be testimony.  
18 THE COURT: Frankly, I thought you were going to  
19 have standby counsel today, but apparently there's been some  
20 mix-up on that.  
21 DEFENDANT LEVETO: Yes. Mr. Lucas, although his  
22 conflict was distant, I think it bothered him and perhaps it  
23 bothered you more than it bothered me.  
24 THE COURT: I didn't even know. That was his  
25 decision to make. I didn't know about it until after the

1 fact.  
2 DEFENDANT LEVETO: Yes.  
3 THE COURT: I don't know that you need standby — I  
4 don't know that you need standby counsel to make a decision  
5 today about whether or not you want to proceed with or without  
6 counsel; but I mean you understand you don't — assuming that  
7 you don't have paid counsel, you don't have the right to  
8 choose whom the Government is going to have represent you, you  
9 understand that.  
10 I mean if — whether you decide the person to be  
11 standby counsel or counsel throughout the trial, I mean active  
12 counsel, it's not your choice to make.  
13 DEFENDANT LEVETO: I understand that, and I haven't  
14 certainly sought to do that. I have not sought to do that at  
15 all. Mr. Prather had some significant issues, and that's why  
16 we ended up in the position we were in.  
17 But I guess I'd also like you to know, Your Honor,  
18 that I'm still in somewhat of a quandary when I have none of  
19 the material that I need for my case, and it makes it very  
20 difficult for me to make some of these decisions on can I  
21 recruit paid counsel. I do not have access to my materials to  
22 be able to even know if I can do what I need to do. I have —  
23 THE COURT: That's where, if you had counsel, it  
24 would help.  
25 DEFENDANT LEVETO: Well —

1 THE COURT: I mean you're talking about —  
2 DEFENDANT LEVETO: Perhaps —  
3 THE COURT: You talk about the prison library not  
4 giving you enough time. I can't control that; and if you  
5 choose to go pro se, that's a handicap you've put on yourself.  
6 I mean naturally a lawyer is going to have access to any  
7 library material that he needs — he or she needs, but I can't  
8 change the prison rules about how much time you're allowed in  
9 the library, that kind of thing. That's why you're really  
10 handicapping yourself by going without a lawyer.  
11 DEFENDANT LEVETO: Well, I understand, Your Honor,  
12 that you can make provisions for me to review documents, even  
13 perhaps at the US Marshals Office so many days a week or  
14 something like that.  
15 THE COURT: No, I can't do that. I can't do that.  
16 DEFENDANT LEVETO: Well, it really does bind me up  
17 if I have no access to my documents.  
18 THE COURT: I don't even — where are the documents?  
19 DEFENDANT LEVETO: There are — as I enumerated in  
20 the motion that I have now before this Court, some of the  
21 documents are within the vehicles that were personally with  
22 me.  
23 THE COURT: I mean were those vehicles confiscated?  
24 DEFENDANT LEVETO: They're not available at this  
25 time, so I don't know what — I have to say that they were.

1 My ex-wife has custody of a number of them, and a number of  
2 them are in storage.  
3 THE COURT: I can't control what she has. I mean  
4 she's not a part of this case, I don't believe.  
5 DEFENDANT LEVETO: I understand that, Your Honor,  
6 but I have to have a place to put them, and then I can — I  
7 can take care of that. The Court doesn't need to be involved  
8 with that.  
9 THE COURT: Well, my strong advice to you would be  
10 to get a lawyer, either paid or appointed to be an active —  
11 act as your active — when I say "active," I mean more than  
12 standby counsel. I mean most of the things you ask for in  
13 this petition I can't grant. I just don't have the power to  
14 do it and — don't have the physical power in some of the  
15 situations and don't have the legal power in others.  
16 DEFENDANT LEVETO: Well, Your Honor, I guess I'm  
17 just trying as a pretrial detainee, perhaps realizing or  
18 hoping that I have most of the rights of a non-pretrial  
19 detainee, I just would like to be able to litigate my case  
20 with a reasonable amount of fairness.  
21 THE COURT: Unfortunately, you don't have all the  
22 rights of a pretrial detainee because you can't do what you  
23 want to in a jail.  
24 (Off the record discussion between the Court and the  
25 law clerk.)

THE COURT: I'm going to take a brief recess on this and then — you can stay here, but I just want to consult in chambers.)

(Whereupon, a recess was taken.)

(In open court.)

THE COURT: Be seated, please.

Okay. The person that had been contacted about being standby counsel, I don't know what happened, but he's not here.

What I've done, I've talked to Judge McLaughlin; and once counsel is appointed, either this standby counsel or another one — Judge McLaughlin is up here all the time. I really can't be commuting from Pittsburgh, although I think you're commuting from DC, Mrs. Calvin, if that be the case, but I don't think we have any choice but to postpone the issue of right to counsel or waiver of the right to counsel; and Judge McLaughlin will handle that, that aspect of the case only, then I'll be handling the rest of it.

Now, did the Government have anything it wanted to say about this motion that — we just got it on May 27<sup>th</sup>, I see, so I didn't know if you had a chance to review that or not.

MS. CALVIN: Your Honor, I did have a chance to read it, and we were hoping that with the outcome of this particular hearing, that there would be a full and complete

colloquy as far as going pro se and standby counsel would be appointed and we could interface with standby counsel as far as those materials over which we have dominion and control.

THE COURT: Yes.

MS. CALVIN: Of course we do not have the other documents in the wife's custody, although we have notified Jamie Mead, who represents the wife, that Dr. Leveto and/or his representative would like access to them.

Documents in storage I know nothing about.

The Rule 16 materials were provided to defense counsel at the time.

THE COURT: Mr. Prather; and I think he said he'd release them to whomever, when he knew who it was.

MS. CALVIN: Exactly. So I think those are being held in a state of suspension pending the outcome —

THE COURT: Yes.

MS. CALVIN: — of the attorney issue.

And any other locations where he ascertains files may have been moved, we have no knowledge of that either.

We did, as ordered by the Court, unseal the document which was sealed, and we did send it to Dr. Leveto. But we're reluctant to give him materials directly in that he said he doesn't have any space to store them, and that's one of the reasons why it would be the Government's position that standby counsel would be in order if he elects to go pro se; then we

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could provide him with those materials.

THE COURT: I'm going to appoint standby counsel whether he wants it or not. The question is would it be active in the sense of conducting the trial, and you've got to go one way or the other on that. It's either standby all the time or active all the time. It can't be half and half, as I indicated before.

MS. CALVIN: I understand that, Your Honor, and it would be our position that until that issue is resolved —

THE COURT: Yes.

MS. CALVIN: — we have to hold discovery.

THE COURT: Right.

I'm going to — as I said, I've talked — I took this recess to talk to Judge McLaughlin, and he's going to be happy to conduct a hearing. He'll schedule that and he'll have your names and everything, and you'll hear from him about when that hearing is; but I'll be the presiding judge for the rest of the case then.

MS. CALVIN: Thank you.

In view of the discussion regarding this motion, do we need to file a written response?

THE COURT: Not unless you want to. I think you've — maybe for the sake of the record — he's got it in paragraph form here; maybe if you just filed an answer responding paragraph by paragraph, the way you would answer in

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a civil case. It doesn't have to be long, but if you would do an answer, I think that would clarify the record.

MS. CALVIN: Thank you, Your Honor.

THE COURT: Okay. I'm sorry for all the inconvenience, but we'll have to go at this another day.

DEFENDANT LEVETO: Your Honor, could I say a couple of things, please?

First of all, I'd like to have any discovery material that could be shipped to me or put to me. I have no idea what that threshold is in the prison right now, but I'd like to receive what I can receive and I don't want anyone to hold back from that.

THE COURT: We'll wait 'til Judge McLaughlin has the hearing on this matter before we do anything.

DEFENDANT LEVETO: Secondly, there's been nothing said about the vehicles and the personal material and the case material that was with me when I was captured. That's one thing we haven't talked about, and that's an issue.

THE COURT: Well, we'll handle those things after the hearing on the counsel takes place.

Okay.

(Whereupon, at 11:55 a.m., court was adjourned.)

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C E R T I F I C A T E

I, Shirley Ann Hall, certify that the foregoing  
is a correct transcript from the record of proceedings in the  
above-titled matter.

s/Shirley Ann Hall  
Shirley Ann Hall, RDR, CRR  
Official Reporter